

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

La Crosse, Wisconsin

CENTURYTEL, INC.¹

Employer

and

Case 30-RC-6566

**DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION LOCAL
695, AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND ORDER

This is my determination as to the appropriateness of the unit sought by the Petitioner.³

The Petitioner seeks to represent all full-time and regular part-time customer and business service representatives; excluding guards, managerial employees and supervisors as defined in the Act. It is the position of the Employer that Board precedent reflects a strong presumption in favor of systemwide units when, as here, the Employer is a utility, and that the Petitioner has not

¹ The name of the Employer appears as amended at hearing.

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³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Timely briefs from the Employer and Petitioner have been received and duly considered, and upon the entire record in this proceeding, the undersigned finds: 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties stipulated, and I find, that CenturyTel, Inc., a Louisiana Corporation, is engaged in the business of providing telecommunication services in La Crosse, Wisconsin, and that during the past calendar year, a representative period, the Employer received gross revenues in excess of \$250,000. During that same period the Employer, in the course and conduct of its business operations, purchased and received goods, supplies and materials valued in excess of \$50,000 that originated outside the State of Wisconsin. 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

overcome this presumption. The Petitioner's position is that while given preference the Board does not require a systemwide unit, and that the less than systemwide unit sought here is appropriate under applicable Board law.

Based on the facts developed in this record, as discussed in detail below, I find the narrow unit sought by the Petitioner in this circumstance is not appropriate. As the Petitioner has stated its unwillingness to proceed to an election in a broader unit, I am dismissing the petition.

Background

The Employer provides telephone and data services to customers in the La Crosse, Wisconsin area as part of its 22 state network.⁴ Prior to being purchased by the Employer in the 1970's, the predecessor employer was known as La Crosse Telephone. The International Brotherhood of Electrical Workers represented La Crosse Telephone employees, and while many titles and organizational details related to the Employer's operation have changed since that time, the unit was apparently systemwide. It appears from the record that that union has not represented any of these employees since around the mid-1970s and that the employees have been unrepresented at all times since then to the present.

As with many utilities the Employer operates as a two-part enterprise; with one "commercial" aspect of the entity focused on elements such as marketing, customer service and other commercial or administrative functions; and a second "operations" division focused on the technical aspects of providing telecommunication services, such as physical operation and maintenance of the network. The petitioned-for unit consists of two classifications of employees involved on the commercial side of this division: Customer Service Representatives (CSRs) and Business Service Representatives (BSRs).

⁴ The Employer operates out of four facilities in La Crosse. These are colloquially known, and referred to herein, as Front Street, Fifth and J, Ward Ave. and Southeast.

A. Commercial

Within the organizational hierarchy of the Employer's commercial division CSRs and BSRs are both grouped in the "customer service" job family.⁵ This job family also includes CSR and BSR supervisors, as well as several other classifications described below whose primary duties involve customer service. The Employer's commercial function is largely based at its Front Street headquarters, where the majority of both CSRs, totaling approximately 239, and BSRs, totaling approximately 134, are assigned.⁶ The latter are located on the third floor and the former on the fourth.⁷

When the public seeks to obtain services from the Employer the customer interacts with the sales mechanism, a commercial function. A customer calls the Employer's contact numbers and, after choosing from an automated menu to narrow the focus of the request, is connected to either a CSR or a BSR. That representative's function is to field the customer's request and, if appropriate, attempt to sell additional products or services to the caller. As the titles indicate the primary difference between the positions is the type of customer with which each is involved, CSRs handle residential customers and BSRs handle for business customers.⁸

⁵ Other job families involved in the commercial division of the Employer's operation include administration, sales, finance, human resources, legal and others. For purposes of determining the appropriateness of the petitioned-for unit it is not necessary to consider the particular details of classifications outside the customer service job family.

⁶ The CSR and BSR classifications also include approximately 15 CSRs and 2 BSRs who specifically handle long-distance services. These employees do not work at the Front Street facility, but instead staff a separate call center at the Fifth and J facility, where they have separate supervision. These employees are otherwise indistinguishable, however, having the same duties and benefits as other CSRs and BSRs and utilizing the same tools to complete those duties.

⁷ Both categories have the expected casual interaction with other classifications, both commercial and operational, located at the Front Street facility that comes with working in the same building: shared break rooms, parking areas, and designated smoking areas.

⁸ BSRs are authorized to field calls from residential customers if call volume makes this necessary.

After a call is terminated the representative enters the customer's information into the Employer's computer system so that the order is conveyed to the proper technical entity, which then performs the function that connects the customer to the network. These functions can range from an automatic function (if a location has preexisting service, a dial tone can be restored by computer without dispatching a technician) digging and laying cable. In the latter situation a service order request is prepared by the representative and sent to a plant support technician, an operations position described in more detail below.

CSRs and BSRs are paid on an hourly basis, utilizing the same wage scale, although the particular wage rate of any representative is dependent upon the products they sell. Both groups of employees progress along the wage scale in an identical manner, with skill testing on a six to twelve month schedule, the proper completion of which is necessary for job retention and pay increases. BSRs receive some additional training related to the specific needs of business customers, but the core training of each classification is the same. A high school education and some computer familiarity are the basic requirements of the positions. Both of these classifications ultimately report to Phyllis Mayo, Vice President of Customer Service and Fulfillment. The similar nature of the positions is reflected in the significant number of transfers from the CSR position to the slightly more skilled BSR position. Between January 1, 2002 and February 29, 2004 over 100 CSRs transferred to BSR positions.

Also grouped in the customer service job family are four other job classifications: client support specialists II, senior client support specialist, coordinator customer service, and customer support specialist. Client support specialist IIs, approximately 17, provide telephone support to Internet and DSL service customers. Senior specialists serve as team leaders for the specialists, but perform the same duties.

Although their contact with the public lacks a sales focus, the mechanism of client support specialists work is similar to that of both CSRs and BSRs. The client support specialists work on the fourth floor of the Front Street facility with the BSRs, in identical cubicles, utilizing the same equipment, and also reporting to Phyllis Mayo. Again the similarity of the work is reflected in the number of transfers, as in approximately the last two years five CSRs have transferred to client support specialist positions, and several client support specialists have become senior client support specialists or customer service supervisors.

The two remaining classifications included in the customer service job family are relatively small in size. The coordinator customer service title is applied to seven employees that serve in varied roles, although their duties are generally related to assisting the sales and supervisory staff in coordinating events.⁹ These events can consist of everything from planning a sales drive to collecting data at a sales team roundtable. Two employees are classified as customer support specialists. Customer support specialists staff a bill payment center open to the public on the first floor of the Front Street facility. In staffing this position customer support specialists utilize the same computer system as the CSRs in order to update a customer's billing information. As with the other members of the customer service job family these employees also report to Mayo.

B. Operations

Several other classifications, outside the customer service job family and on the other side of the commercial/operations divide, perform duties similar to CSRs and BSRs. Plant support technicians and test board technicians are the two classifications with the most similarity. The majority of the approximately 95 plant support technicians are assigned to the plant support

⁹ These coordinators are salaried office employees, and on this basis at hearing the Employer withdrew the coordinator customer service classification from its proposed systemwide unit.

center on the fifth floor of the Front Street offices. In the support center their functions are divided into two primary roles: repair and dispatch. Repair employees field calls from customers who have lost service, the information they receive is entered into the Employer's computer system in a manner similar to CSRs and BSRs. Dispatch technicians are responsible for service order activity. As noted above, once a CSR, BSR or plant service technician takes a system order request, a dispatch technician then takes this information and makes the appropriate contact with a field technician. This is done primarily by a voice mail system.

The approximately 9 test board technicians serve in a role similar to plant support technicians, but generally are experienced plant support technicians or have some technical training that allows them to analyze complaints instead of merely responding to them. Although test board technicians use the same basic tools such as a telephone and computer that other employees discussed above use, they do have access to additional software allowing them to perform more specialized testing functions on the network. Test board technicians also are assigned to the Front Street fifth floor service center and work in an area adjacent to the plant service technicians. Like plant service technicians, test board technicians are paid on an hourly basis.

Both of these technician groups receive formalized sales training, and those serving in a repair role have a sales quota and participate in the same bonus programs as CSRs and BSRs. The primary product sold by these employees is the Employer's wire maintenance program, compared to services typically offered by CSRs and BSRs such as call waiting and voice mail; but if the repair call presents the opportunity to sell these products, the plant support technicians are free to sell these products.

In approximately the last two years eleven CSRs have transferred to plant support technician positions, and two plant support technicians have transferred to CSR positions. Although grouped in the “craft & technical” job family and not customer service, Phyllis Mayo ultimately supervises both plant support technicians and test board technicians.

Many additional classifications involved in the operations portion of the company would likely be included in a systemwide unit.¹⁰ The Employer argues these classifications are properly included in what it argues is the only appropriate unit. As I find that the petitioned-for unit is not appropriate, I need not determine whether a systemwide unit is the only appropriate unit. Therefore, it is not necessary to describe these other classifications in detail.

Analysis

It is a well-established point of Board law that when employees seek representation they need not be organized in the most appropriate unit, but rather that the unit be an appropriate unit. *Verizon Wireless*, 341 NLRB No. 63, slip. op. 5 (2004), citing *Overnight Transportation Co.*, 322 NLRB 723 (1996). In the standard circumstance the question of whether a unit is an appropriate one is a question of whether the employees share a sufficient community of interest. *Id.* In the utility industry, where a significant public interest exists in uninterrupted service, the Board has adopted a preference for systemwide units. *Deposit Telephone Co.*, 328 NLRB 1029 (1999); *Tidewater Telephone Co.*, 181 NLRB 867 (1970). Telecommunications providers are included within this systemwide preference category. *Id.*

This preference is just that, however, a preference and not a requirement. The Board has held that this presumption does not foreclose the possibility that a more narrow unit may be

¹⁰ These classifications include business system technicians, cable technicians, communications technicians, plant technicians, inspectors, access service specialists, building service specialists, building service technicians, system administration coordinators, plant operations coordinators and approximately a dozen others.

appropriate. *Verizon Wireless*, supra. In considering whether a less than systemwide unit is appropriate in the utility context the Board requires that the employees in question must: (1) have no opposing bargaining history, (2) work in an administrative subdivision or a distinct geographical service area of the utility, and (3) enjoy a substantial community of interest sufficient to make less than systemwide bargaining feasible. *Id.*, citing *Colorado Interstate Gas Co.*, 202 NLRB 847, 848-849 (1973). See also, *PECO Energy Co.*, 322 NLRB 1074 (1997), and *Baltimore Gas and Electric*, 206 NLRB 199, 201 (1973).

A. Bargaining History

Although occasionally the language used implies the first factor is a determinative one, finding a history of collective bargaining on a systemwide basis does not act as an absolute prohibition on a narrower unit. Instead, if a history of systemwide collective bargaining exists the circumstances surrounding that bargaining are analyzed and that history is considered a factor, of varying weight, in favor of a systemwide unit in the overall analysis. In *Michigan Bell Telephone Co.*, 192 NLRB 1212, 1214-1215 (1971), the Board held that systemwide bargaining history, 20 years prior to the petition, was not controlling, but merely a factor for consideration.¹¹

In the present case there is bargaining history in a systemwide unit. The Employer argues that the existence of a “wall to wall unit” within La Crosse Telephone in the late 1960’s and 1970’s, consisting of all hourly employees and including commercial clerks (the precursor position to CSRs and BSRs), should be given controlling weight. I find that, consistent with the Board’s decision in *Michigan Bell*, supra, the history of collective bargaining at the Employer in a systemwide unit having not existed for nearly 30 years, is too remote in time to be controlling, although it will be considered as a factor weighing in favor of a systemwide unit. Similarly

¹¹ The decision in *Michigan Bell* also found that the evidence that other employees of the Employer were represented in systemwide units to be a factor for consideration, but not controlling.

under *Michigan Bell* the evidence introduced by the Employer at hearing that its employees at other, represented facilities are grouped in systemwide units is a factor to be considered, but I do not find it controlling.

B. Administrative Subdivision

The second factor in the instant analysis is whether the petitioned-for unit includes employees who work in an administrative subdivision or a distinct geographical service area of the utility. The issue in the present case is whether CSRs and BSRs alone represent an administrative subdivision within the utility, as geographical service area is not at issue. I find they do not, and that no distinct administrative subdivision exists smaller than the job family level.

The organization of the Employer is fairly clear from the record. A complex and highly integrated service provider, the Employer has need for a large number of departments specializing in a variety of tasks. An administrative hierarchy is critical to efficient control of such an enterprise. The record reflects that the Employer groups classifications for this purpose in job families. Evidence was not presented, either generally or specifically in regard to CSRs and BSRs, indicating that within a job family another layer of administrative specialization exists. For that reason I find CSRs and BSRs, excluding the remainder of the customer service job family, do not form a distinct administrative subdivision.

C. Community of Interest

The final factor of the Board's test, that employees enjoy a substantial community of interest sufficient to make less than systemwide bargaining feasible, applies the Board's standard test to the employees in question. In determining whether the employees in the unit sought share a community of interest, the Board examines such factors as mutuality of interest in wages,

hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994), *aff'd* 66 F.3d 328 (7th Cir. 1995). The Petitioner's desire concerning the composition of the unit also constitutes a relevant consideration, although it is not controlling. See *Marks Oxygen Company of Alabama*, 147 NLRB 228 (1964).

In the present case, applying the above factors, there can be little dispute that all of the CSRs and BSRs share a community of interest. These employees share a wage scale and incentive programs, and work similar hours under similar working conditions. While the first line of supervision will be departmental due to the large number of employees in both groups, ultimately both report to Phyllis Mayo. Both classifications have nearly identical duties, use identical equipment to accomplish those duties; and share a core training program to prepare employees for these duties. The interchange and functional integration between these two groups is also greater than just the casual interaction of employees working in the same building, as evidenced by BSRs at times performing CSR work and the very large number of transfers between the CSR and BSR classifications in the last two years.

I also find, however, that there is a compelling community of interest between the CSRs and BSRs and the remaining hourly classifications in the customer service job family, both categories of client support specialists and customer support specialists. As such these classifications must be included in any appropriate unit, and the petitioned-for unit is inappropriate under *PECO Energy Co.*, *supra*. The Petitioner has clearly stated on the record its unwillingness to proceed in any other unit except the petitioned-for unit, therefore the instant petition will be dismissed.

The differences between the positions within the customer service job family demonstrated by the Petitioner are merely the details in duties that make these positions separate. It is true that client support specialists do not have the sales focus of CSRs and BSRs. It is also true that customer support specialists do not utilize the phone in interacting with the public, or work on the same floor as the petitioned-for employees. However, these differences are merely the manner in which each position fulfills, in their own role, the purpose of this overall job family, providing customer service. The compelling factors here, under the Board's community of interest test, are that the employees share a wage structure as hourly employees; a commonality of supervision in reporting to Phyllis Mayo; a degree of skill and common functions in the focus on customer service and contact with the public (either in person or by phone); frequency of contact and interchange reflected in the shared common areas of the Front Street facility; and finally the functional integration reflected in the transfers between the positions.¹²

Further, I find that in light of the Board's articulated goal of avoiding undue fragmentation of units in the utilities industry in order to avoid undue interruption of service, an appropriate unit of CSRs and BSRs must also at least include plant service and test board technicians. Although these positions are nominally positioned in another job family, and on the other side of the commercial/operational division, the community of interest between these groups and the customer service job family positions described above is overwhelming. These

¹² The coordinator customer service classification, although within the same administrative subdivision of the CSRs and BSRs, the customer service job family, does not have the same compelling community of interest shared by the other classifications in this job family because the manner of work and wage structure are different. Therefore I find that its inclusion is not required in a unit containing CSRs and BSRs, and I do not rely on its exclusion from the petitioned-for unit in making my decision.

groups of technicians use identical, or nearly identical, equipment to accomplish similar tasks in close proximity to the CSRs and BSRs. The wage and incentive structure is nearly identical, and they share common supervision, as all groups ultimately report to Phyllis Mayo. Additionally, the level of interchange between the CSR and plant service technician classifications, reflected in part by the significant number of transfers between positions, also weighs in favor of the required inclusion of these additional technician groups.

I note that in support of its argument that only a systemwide unit is appropriate the Employer produced evidence at hearing regarding the Employer's uniform rules and procedures covering a variety of subjects. Some aspects of employment are general enough that they apply to all, or almost all employees, simply as a function of being company employees. Benefits, such as participation in Employer-sponsored functions including a holiday party, wellness fairs, athletic activities and charitable drives, and obligations, such as dress code and other workplace rules, fall into this category. This type of general term or condition of employment is not probative in determining whether the petitioned for unit is appropriate, and I do not rely on these particular terms and conditions in making my decision.

For the reasons articulated above I find the petitioned-for unit is not an appropriate unit. I need not determine whether a systemwide unit is required as argued by the Employer, or whether a less than systemwide unit of a different construction may be appropriate.

ORDER

Because the Petitioner has stated its unwillingness to proceed to an election in a broader unit, it is hereby ordered that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by April 29, 2004**

Signed at Milwaukee, Wisconsin on April 15, 2004.

/s/ Joyce Ann Seiser
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